UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION TWENTY-FIVE

KEN-TRON MANUFACTURING, Employer

and 25-UD-085770

BRIAN HORTON,
Petitioner

and

UNITED STEELWORKERS OF AMERICA LOCAL 9443-05, Union

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(e) of the National Labor Relations Act, as amended, a hearing was held August 2, 2012, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Upon the entire record in this proceeding, the Acting Regional Director finds:

- (1) The hearing officer's rulings made at the hearing are free from error and are hereby affirmed
- (2) Ken-Tron Manufacturing, herein called the Employer, is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- (3) The parties stipulated that the following employees, a unit appropriate for the purposes of collective bargaining, are covered by a collective bargaining agreement effective from December 3, 2011, until 5:00 PM, December 6, 2014:

All production and maintenance employees, including group leaders, section leaders, lead-men, truck drivers, working foremen and plant clerical employees, BUT EXCLUDING draftsmen, office clerical employees, office janitorial, guards, professional employees and all supervisors as defined under the National Labor Relations Act, as amended. ¹

The Employer argues that non-reinstated strikers, who commenced a strike on September

- (4) The above described collective bargaining agreement contains a union security clause
- (5) Accordingly, it appears appropriate now to conduct a secret-ballot election to determine whether or not certain of the employees of the Employer wish to withdraw the authority of the Union to require, under its agreement with their employer, that employees make certain lawful payments to the union in order to retain their jobs.²

Accordingly, pursuant to Section 9(e)(1) of the National Labor Relations Act, as amended an election by secret ballot will be conducted. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list

^{10, 2011,} do not share a community of interest with the rest of the bargaining unit as they are not currently making payments to the union under the union security clause. Section 9(c)(3) of the Act provides that replaced economic strikers remain eligible to vote in an election conducted within a 12-month period following the commencement of the strike. This has been found to apply to a union-security deauthorization election as well as any election for the purpose of determining a union's majority status, *L.E.M.*, *Inc.*, *d/b/a Southwest Engraving Co. and Towell Printing Co.*, 198 NLRB 694 (1972).

The Employer raises issues with the legitimacy of the petition. Such allegations are not appropriate subjects for the instant proceeding.

of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by the undersigned to assist in determining an adequate showing of interest. In turn, the list shall be made available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577 on or before August 17, 2012. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency website, www.nlrb.gov, by mail, or by facsimile transmission at (317)226-5103. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of two copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

To file the list electronically, go to the Agency's website at www.nlrb.gov, select File Case Documents, enter the NLRB Case Number, and follow the detailed instructions.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on August 24, 2012, at 5:00 p.m. (ET), unless filed electronically. Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁴ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on File Case Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

SIGNED AT Indianapolis, Indiana, this 10th day of August, 2012. Satricia J. nachard

Patricia K. Nachand

Acting Regional Director

National Labor Relations Board

Region 25

Room 238, Minton-Capehart Building

575 North Pennsylvania Street

⁴ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Indianapolis, IN 46204